

**FULL COMMITTEE MARKUP OF H.R. 1873,  
THE SMALL BUSINESS FAIRNESS IN  
CONTRACTING ACT**

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**COMMITTEE ON SMALL BUSINESS  
UNITED STATES HOUSE OF  
REPRESENTATIVES**

**ONE HUNDRED TENTH CONGRESS**

**FIRST SESSION**

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**April 24, 2007**

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**FULL COMMITTEE MARKUP OF H.R. 1873,  
"THE SMALL BUSINESS FAIRNESS IN  
CONTRACTING ACT"**

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**TUESDAY, APRIL 24, 2007**

U.S. HOUSE OF REPRESENTATIVES,  
COMMITTEE ON SMALL BUSINESS,  
*Washington, DC.*

The Committee met, pursuant to notice, at 2:00 p.m., in Room 2360, Rayburn House Office Building, Hon. Nydia Velázquez [Chairwoman of the Committee] presiding.

Present: Representatives Shuler, González, Michaud, Cuellar, Braley, Sestak, Chabot, Graves, Davis, Fallin, Buchanan and Jordan.

**OPENING STATEMENT OF CHAIRWOMAN VELÁZQUEZ**

Chairwoman VELÁZQUEZ. Good morning. Before we begin, I would like to remember our colleague and fellow Committee Member Representative Millender-McDonald. So many times we forget the great people we work with day in and day out, and Juanita Millender-McDonald was one of those people. I would like us to recognize her and to honor her by taking a moment of silence.

[A moment of silence was observed.]

Chairwoman VELÁZQUEZ. I call this markup to order on H.R. 1873, "The Small Business Fairness in Contracting Act". We are here today to consider H.R. 1873, a bill introduced by Mr. Braley. The Chairman's amendment in the nature of the substitute will serve as the bill to be considered before the Committee today as base text for purposes of amendment.

Chairwoman VELÁZQUEZ. I am very proud of this bipartisan legislation, and I want to recognize both, Committee staff from the Democratic and the Republican side. We all work together. We have extensive discussions. And many members from both sides of the aisle had input into this legislation.

Last year the Federal Government spent \$340 billion on goods and services. Our goal is make sure small businesses get their fair share of Government contracts.

In recent years, this Committee has held a number of hearings on federal procurement. During this Congress we have already held three hearings on the issue and we continue to find the same problems over and over again.

Although the government is spending more, fewer contracts are being awarded. Individual contracts are being bundled together into mega-contracts. While this may be more convenient for the

contracting officers, barring small businesses from the marketplace reduces competition. This often results in higher costs to the tax-payers and decreased value for the government.

Another problem is that federal agencies are not taking small businesses' requirements seriously. Small business participation accomplishments reported by agencies is nowhere near the maximum extent possible, disappointing levels of small businesses participation are often inflated due to misquoted data. H.R. 1873 addresses all of these problems.

The Small Business Fairness in Contracting Act will help to ensure that mega-contracts are being identified and subjected to review. The bill expands the definition of contract bundling and makes the appeals process more accessible by allowing trade associations to advocate on behalf of their members. The definition will also be expanded to include construction on new work.

In addition, the bill provides for third party review of bundling decisions, which will provide a neutral forum for resolution. The Manager's Amendment includes a few changes to insure the definition is codified so that only contracts that are likely to be bundled have to be reviewed. It also provides that the legislation would be implemented into the rules the contracting officers consult when making awards.

H.R. 1873 will provide more opportunities for small businesses, like raising the small business contracting goal to 30 percent and expand it to overseas contracts.

Finally, The Small Business Fairness in Contracting Act will ensure that only small business contracts are being counted toward small-business achievement. H.R. 1873 aims to clean up federal contracting databases so that when agencies release the small business accomplishments their numbers are accurate.

Right now, large businesses are identifying themselves as small in the central contract registry. Government agencies are recording large-business contracts as small business awards in the federal procurement data system. When contracts are awarded to large businesses and counted toward small business achievements, agencies have less incentive to create additional small business opportunity.

I urge you all to consider these barriers that small businesses face and offer your support to this important legislation. I now yield to Mr. Chabot for his opening statement.

#### **OPENING STATEMENT OF MR. CHABOT**

Mr. CHABOT. Thank you, Madam Chair. And I want to thank you, Madam, for holding this markup today and for pushing for this important legislation.

H.R. 1873, The Small Business Fairness in Contracting Act in my view is a good bill that should be reported out of this Committee favorably. This is important legislation, and it would expand small-business opportunities in the federal marketplace and take necessary steps to help ensure that federal agencies meet their small business procurement requirements.

Specifically, H.R. 1873 would expand the definition of contract bundling. Contract bundling remains a problem, and this bill would require additional information from agencies to justify bundling.

The bill would also enhance the review process agencies must undergo when issuing a bundling decision.

This bill would also increase the government-wide small-business goal from 23 percent—lower than the government-wide goal. It will also require the SBA to establish standards for reviewing subcontracting plans. And finally the bill will strengthen the review and reporting process to better identify who is a small business and who is not.

The Small Business Fairness in Contracting Act makes important changes to help small businesses in the federal procurement process, and I urge its adoption.

Once again, I thank the chairwoman for her continued leadership on this issue and yield back the balance of my time.

Chairwoman VELÁZQUEZ. I now yield to Mr. Braley for his statement on this legislation.

#### **OPENING STATEMENT OF MR. BRALEY**

Mr. BRALEY. Thank you, Madam Chairwoman, for holding this markup and thank you for those remarks, Ranking Member Chabot. I really appreciate your support. I also want to echo your condolences to the family, friends and colleagues of Congresswoman Millender-McDonald. She will be sorely missed in this Congress.

Last week, the Small Business Committee held a hearing on expanding the small business's access to federal contracts. I was pleased we were able to have a meaningful discussion, hearing from small-business owners and representatives that want a fair opportunity to compete for and to win federal contracts.

Over the past five years, government agencies have greatly increased contract bundling, often combining work small businesses could perform into giant packages that exceed small firms' ability to compete for the work. During the same time, total government contracting has increased by 60 percent while small-business contracts have decreased by 55 percent.

Last Friday President Bush proclaimed this week as National Small Business Week. That is why it's so appropriate that today we'll be marking up H.R. 1873, The Small Business Fairness in Contracting Act, sending a message to small businesses that this Committee is serious about leveling the playing field for them by improving their opportunities to compete for federal contracts.

Small businesses are the number one job creators in this country, and we need to ensure that this engine not only remains healthy but has the support it needs to grow. It's essential to help remove the barriers blocking small businesses from entering the nearly \$400 billion per year federal marketplace.

As I mentioned in the hearing last week, Iowa ranks near the bottom in terms of government contracting dollars awarded to small businesses, yet these small businesses play such an important role in all of our districts that allowing them a fair opportunity to bid on federal contracts will bring economic vitality to our respective towns and cities.

I'm particularly pleased that this bill has received such strong bipartisan support from members of the Small Business Committee.

And I thank you, Madam Chairwoman, and all of my colleagues who join me in standing up for the interests of small businesses.

Chairwoman VELÁZQUEZ. Thank you, and it was important work that you did on this legislation.

Are there any other members who wish to be recognized on this bill?

[No response.]

Chairwoman VELÁZQUEZ. The bill shall now be considered open for amendment at any time. Does any member seek recognition for the purpose of offering an amendment?

Seeing no amendments, the question is on reporting H.R. 1873 with amendment. All those in favor say aye.

[Chorus of ayes.]

Chairman VELÁZQUEZ. Those opposed, say no.

[No response.]

Chairman VELÁZQUEZ. The ayes have it. The bill is adopted and reported. I ask unanimous consent that the clerk be authorized to correct section numbers, punctuation and cross references and to make all the necessary technical and conforming corrections. Without objection, so ordered.

That concludes the markup, and we are now adjourned. Thank you.

[Whereupon, at 2:20 p.m., the Committee was adjourned.]

STATEMENT  
of the  
Honorable Nydia M. Velázquez, Chairwoman  
House Committee on Small Business  
Markup of the Small Business Fairness in Contracting Act  
April 24, 2007

We are here today to consider H.R. 1873, the Small Business Fairness in Contracting Act.

Last year, the federal government spent \$340 billion on goods and services. Our goal is to make sure small businesses get their fair share. To accomplish this, federal law provides various tools to help ensure entrepreneurs are getting the contracts they deserve – but it is not enough. Small firms are still locked out of the federal marketplace.

In recent years, this Committee has held a number of hearings on federal procurement. This Congress, we've already held three, and we keep hearing about the same problems over and over again.

Although the government is buying more, fewer contracts are being awarded. Individual contracts are being bundled together into mega-contracts that small companies simply cannot perform. While this may save the government time and money in the initial contracting process, barring small businesses from the marketplace reduces competition. This often results in higher costs to the taxpayer and decreased value for the government.

Another problem is that federal agencies treat the 23 percent small business contracting goal as a ceiling rather than as a floor. Agencies are supposed to use small businesses to the maximum extent possible – but it is not happening. Agencies make little effort to go beyond the 23 percent goal and this has to change.

Even worse, not only are the small business accomplishments reported by agencies nowhere near the maximum extent possible, these disappointing accomplishments are often inflated due to miscoded data.

H.R. 1873 addresses all of these problems. The Small Business Fairness in Contracting Act will help to ensure that mega-contracts are being identified and subjected to review. The bill expands the definition of contract bundling, and makes the appeals process more accessible by allowing trade associations to advocate on behalf of their members. The definition will be also expanded to include construction and new work, both of which have been previously excluded. In addition, the bill provides for third-party review of bundling decisions, which will provide a neutral forum for resolution – a necessity that was previously unavailable.

The bill will increase opportunities for small businesses to participate in the federal marketplace. The bill raises the small business contracting goal to 30 percent, and expands it to overseas contracts. It also requires the creation of a database for subcontracting achievements that can be used to help small businesses market to prime contractors that need to meet their small business goals.

The Small Business Fairness in Contracting Act will ensure that only small business contracts are being counted towards small business achievements. The bill contains provisions designed to correct the miscoding problem that leads to inflated small business achievements.

H.R. 1873 aims to clean up both the Central Contract Registry and the Federal Procurement Data System so that when agencies release their small business accomplishments, the numbers are accurate. There are two primary causes of inflation: large businesses identifying themselves as small in CCR, and government agencies recording large business contracts as small business awards in FPDS. When contracts are awarded to large businesses and counted towards small business achievements, agencies have less incentive to create additional small business opportunities.

I urge you all to consider these barriers that small businesses face in obtaining work as federal contractors, and offer your support to this important legislation. The Small Business Fairness in Contracting Act is designed to help small businesses compete by increasing access and reducing fraud.

**Opening Statement**

Hearing Name	Markup on Procurement
Committee	Full Committee
Date	4/24/2007

**Opening Statement of Ranking Member Chabot**

I want to thank Chairwoman Velazquez for holding this markup today. H.R. 1873, the Small Business Fairness in Contracting Act is a good bill that should be reported out of committee favorably.

"This important legislation would expand small business opportunities in the federal marketplace and take necessary steps to help ensure that federal agencies meet their small business procurement requirements.

"Specifically, H.R. 1873 would:

"Expand the definition of contract bundling. Contract bundling remains a problem, and this bill would require additional information from agencies to justify bundling. The bill would also enhance the review process agencies must undergo when issuing a bundling decision.

"Increase the government-wide small business goal from 23 percent to 30 percent and require each agency to negotiate a small business goal not lower than the government wide goal.

"Require the SBA to establish standards for reviewing subcontracting plans

"Strengthen the review and reporting process to better identify who is a small business and who is not.

"The Small Business Fairness in Contracting Act makes important changes to help small businesses in the federal procurement process, and I urge its adoption. I thank the Chairwoman for her continued leadership on the issue and I yield back."

## BRUCE L. BRALEY

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April 24, 2007

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**Opening Statement: Markup on HR 1873, the Small Business****Fairness in Contracting Act**

Thank you Madame Chairwoman for holding this markup.

I would first like to take a moment to send my condolences out to the family, friends, and colleagues of Congresswoman Millender-McDonald. I was deeply saddened to hear about her death. I feel privileged that I got an opportunity to serve with her on the Small Business Committee. My thoughts and prayers are with her loved ones during this difficult time.

Last week, the Small Business Committee held a hearing on Expanding Small Businesses' Access to Federal Contracts. I was pleased we were able to have a meaningful discussion, hearing from small business owners and representatives that want a fair opportunity to compete for and win federal contracts.

Over the past 5 years, government agencies have greatly increased contract bundling—often times combining work small

businesses could perform into giant packages that exceed small firms' ability to compete for this work. During this same time, total government contracting has increased by 60% while small businesses' contracts have decreased by 55%.

Last Friday, President Bush proclaimed this week as National Small Business Week. That is why it is so appropriate that today we will be marking up H.R. 1873, *the Small Business Fairness in Contracting Act*, sending a message to small businesses that this Committee is serious about leveling the playing field for them by improving their opportunities to compete for federal contracts.

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I am particularly pleased that this bill has received such strong bipartisan support from Members of the Small Business Committee. Thank you Madame Chairwoman, and thank you to all of my colleagues who join me in standing up for the interests of small businesses.

